

Oregon Forest Restoration and Old Growth Protection Act
Senator Ron Wyden
Section by Section

Sec. 1. Short Title; Table of Contents. This bill is named the “*Oregon Forest Restoration and Old Growth Protection Act of 2009*”

Sec. 2. Purposes.

The purposes of this Act are—

- Conserve and restore Oregon’s forests;
- Create an immediate, predictable, and sustainable timber flow to support locally-based restoration economies;
- Make Oregon’s forests more resilient to the impacts of climate change and reduce releases of carbon that result from uncharacteristic wildfires;
- Protect and restore old growth and older mature stands and trees in Oregon, particularly recognizing fundamental differences in strategies for forests and trees on moist and dry forest sites;
- Expedite actions that achieve ecological objectives and provide economic and social benefits;
- Promote collaboration in communities to support natural resource and restoration-based economies;
- Plan for managing plantations in Matrix lands for sustained timber production;
- Streamline administrative processes for ecologically-based projects that result in improved forest conditions;
- Conserve and restore aquatic systems and watersheds;
- Prioritize and strategically target restoration projects in stands with uncharacteristic fuel buildups to improve fire resiliency;
- Implement legislation which retains and builds upon the Northwest Forest Plan;
- Provide periodic independent review of agency programs in meeting the goals of the legislation;
- Recognize that the threat to forest health and rural economies has reached an emergency status;
- Ensure the Federal lands are good neighbors to private landowners.

Sec. 3. Definitions.

Defines terms used in the bill.

Sec. 4. Forest Management.

This Section establishes guidance for the Forest Service and the Bureau of Land Management to direct their forest management activities on their lands within the state of Oregon. They provide broad priorities, objectives and prohibitions that the agencies are to apply.

(a) Landscape Scale Project Planning for Forest Restoration Projects. – This section directs the Secretaries of Agriculture and Interior (with oversight of Forest Service and Bureau of Land Management Lands) to use landscape scale planning to undertake restoration projects on Oregon’s Federal forestlands. This directs the Agencies to use natural geographical and biological boundaries in identifying landscape boundaries.

This provision also establishes priorities for forestry projects.

- Dry site priorities include protecting at-risk communities and valuable forest structures, such as old growth and older mature trees, restoring historic forest conditions and increasing fire resiliency.
- Moist site priorities include acceleration of complex forest structure.
- Priorities include helping communities implement community wildfire protection plans.

(b) Old Growth and Older Mature Forest Protections. –

This section prohibits the harvesting of:

- 1) old growth and older mature trees or
- 2) trees within old growth and older mature forest stands in moist forests.

Old growth and older mature trees and stands are defined in Section 3 and the bill’s silvicultural guidance explains the application of this prohibition in both Late-successional Reserves and Matrix and Adaptive Management Areas.

An exception is provided in limited instances for administrative or scientific purposes, but no trees can be sold commercially. An exception for forests not covered by the Northwest Forest Plan also provides for ecologically appropriate tree removal.

This section also directs the Agencies to establish a process for aging trees.

(c) Inventoried Roadless Areas. – Projects authorized under Sections 5 and 6 of this legislation may not be carried out inside any inventoried roadless area boundary.

(d) Aquatic Conservation Strategy. – The Secretaries shall incorporate aquatic conservation strategies into forest restoration work in accordance with the Aquatic Conservation Strategy for each area managed under the Northwest Forest Plan and with newly developed aquatic protection objectives for each area not managed under the Northwest Forest Plan.

(e) Silvicultural Activities. – Provides guidance for forest management activities

- (1) Silvicultural activities are to be conducted in accordance with the guidance established in this section of the bill.
- (2) Thinning activities should enhance diversity and retain and protect old growth and older mature trees.

(3),(4) and (5) Moist Forest Sites:

- In moist forest sites the goals are to:
 - retain old growth and older mature trees and stands;
 - restore contiguous blocks of late-successional forests in the Late-successional Reserves; and
 - manage Matrix and Adaptive Management Areas for ecological and economic objectives.

- In Late-successional Reserves, silvicultural activities shall accelerate late-successional attributes and prioritize activities to plantations and young forest stands established after logging.
- In Matrix and Adaptive Management Areas, activities can provide both ecological and economic benefits and may result in ecological forestry based regeneration harvests; activities can occur in stands dominated by trees under 120 years of age, as well as on trees currently aged less than 120 years of age regardless of whether they subsequently get to be older than 120 years of age. All ages are to be measured at breast height.

(6) and (7) Dry Forest Sites:

- In dry forest sites the goals are to:
 - retain old growth and older mature trees and stands;
 - restore forest landscapes to ecological sustainability;
 - retain Late-successional Reserves;
 - provide wood harvests as a result of restoration;
 - maintain sustainable conditions through continued active management;
 - incorporate spatial complexity; and
 - continue management to maintain fire resiliency.
- (8) Basal areas targets are to be established by individual plant associations but should never be reduced below 35% of the initial basal areas for projects authorized by Sections 5 and 6 of this legislation
- (9) Dry forest site projects should provide for spatial heterogeneity across the landscape level which should include variable forest patches; restoration activities should consider and enhance spatial variability with ongoing treatments.
- (10) Treatments should consider understory plant communities and seek to restore native ground cover while reducing exotic and invasive species.

(f) Evaluative Criteria. – The Agencies are directed to apply qualitative rather than quantitative criteria to determine compliance with this Act. Qualitative criteria should include improved forest health and resiliency along with success in meeting the Act’s treatment priorities.

Sec. 5. Restoration Projects.

- (a) Each Forest Service Forest and Bureau of Land Management District must plan at least one pilot restoration project within two years after the bill’s passage.
- (b) Each project carried out in accordance with this section is eligible for a categorical exclusion from the requirements of the National Environmental Policy Act of 1969 (NEPA).
- (c) The eligible projects under this section are:
 - (A) Thinning in moist forest sites if the project meets the specific environmental safeguards (including aquatic protections, bans on clearcutting and limits on roadbuilding);

- (B) Thinning in dry forest sites if the project meets the specific environmental safeguards (including aquatic protections, bans on clearcutting and limits on roadbuilding);
- (C) Prescribed fire projects;
- (D) Instream, riparian, or stream restoration projects that meet the specific environmental safeguards;
- (E) Replacement of culverts that meet the specific environmental safeguards;
- (F) Removal, maintenance and repair of roads when the result provides a net benefit to the watershed and aquatic health.
- The projects and activities in this section shall not be used for post-fire harvesting.
- In developing the projects for this section, the Secretaries shall examine opportunities for and seek net road reduction. This section identifies strategies to decommission and close roads to minimize hydrologic impacts and directs initial efforts to nonessential roads most likely to cause the most environmental harm.

(d) Collaboration-Based Size Restrictions on Thinning – Collaborative groups are to be appointed, from newly formed or existing groups (including existing Resource Advisory Committee groups established under the Secure Rural Schools and Community Self-Determination Act) to develop and certify the projects under this Section.

- The groups can be interagency or regional groups or cover a Forest Service Forest or Bureau of Land Management District.
- Members of the group should include representatives of:
 - (i) environmental organizations;
 - (ii) timber and forest products industry representatives;
 - (iii) labor organizations or nontimber forest product harvester groups;
 - (iv) county governments; and
 - (v) the State or the local designee of the State.
- The public is to be provided an opportunity to comment on the appointments and to participate in the collaborative group.
- Each group has one year to develop and certify a project with a $\frac{3}{4}$ majority vote and at least one representative of each listed category voting for the project.
- Certified projects can cover up to 25,000 gross acres. If there is no certification within a year, the Agencies may develop projects meeting criteria on up to 10,000 gross acres.

(e) Observer Program – The Secretaries are to establish an observer program to verify no more than a de minimis quantity (1 % of the project area) of old growth and older mature trees are cut and that no trees were cut within inventoried roadless areas. The Secretaries will establish contracts with the observers, develop criteria for the assessment and make the observers' reviews public and available on the Secretaries' websites.

- After the observer review occurs, Agency Inspector Generals, in consultation with Agency scientists, are to review overall project success in meeting project criteria. For project areas larger than 10,000 acres, the Secretaries may evaluate a sample of project sites.
- The Agency Inspector Generals shall certify projects based on the observer assessment of compliance and corresponding certification. If such a certification is received the Secretaries may increase the size of subsequent projects carried out under this Section on

the same Forest Service Forest or Bureau of Land Management District as was certified by 50% except that no project may exceed 50,000 acres.

- If more than 3% of the old growth or older mature trees in a project area were cut under a project carried out under this Section, the local Forest Service Forest or Bureau of Land Management District performing the project shall be ineligible to carry out a project under this Section for a period of 2 years.
- Funding that is provided to the Forest Service Forest or Bureau of Land Management District for projects is to be used to fund this provision as part of the project costs.

(f) Public Involvement and Appeals –

- Public participation is to be encouraged.
- There is a 30-day comment period which begins when the Secretaries issue a proposed project decision.
- The Secretaries shall have 15 days to review the comments and publish a final decision.
- Administrative appeals are not allowed.
- The Secretaries are to establish an objection process that gives the public at least 15 days to make an objection; objections can only relate to whether the projects meet the specific criteria in this Section and the Secretaries shall consider and seek to resolve the objection. If no resolution is reached the objector can only seek to resolve the dispute in a court action.

(g) Administrative Costs for Restoration Projects – Administrative overhead costs charged for the regional and national offices shall not exceed 3% of the project costs.

Sec. 6. Expedited Administrative Review of Other Restoration Projects.

Other restoration projects that are conducted in accordance with the forest management directives in Section 4 shall utilize the expedited timeline in this Section.

- Administrative appeals are limited to members of the public that were involved in the public comment or collaborative process for the project.
- Timeline:
 - Pre-decisional protests may be filed within 30 days following the release of National Environmental Policy Act of 1969 (NEPA) analysis.
 - The Secretaries will review comments and issue a decision.
 - 30 days are allowed for an administrative appeal after the agency issues a final decision.
- Judicial review is preserved.

Sec. 7. Applicability with Respect to Oregon and California Grant Land.

Oregon and California grant land is covered under this legislation except that it shall be withdrawn from the old growth and older mature forest protections under this Act for:

- trees between 120 and 160 years of age as of the date of enactment of this Act for Adaptive Management Areas or Matrix lands.
- trees between 120 and 160 years of age in Late-successional Reserves.
- trees within old growth and older mature forest stands, if the stand age is greater than 120 and less than 160 years of age.

- No trees greater than 160 years of age as of the date of the Act's enactment shall be harvested in Oregon and California grant lands.
- None of the requirements or limitations on projects undertaken under the provisions of Sections 5 or 6 are to be altered by this Section and no other requirements under the Northwest Forest Plan, endangered species plans or environmental laws are to be changed as a result of this section.

Sec. 8. Biomass.

The Secretaries shall further enhance energy generation from woody biomass especially in connection with forest restoration activities.

- Regional Biomass Projects. – The Secretaries, upon determining a demand for a regional biomass project, may designate an area where biomass removal is necessary and a 20 year supply of biomass volume is sustainable. The Secretaries may enter into 20 year contracts to supply biomass with the option of adjustments after 10 years.
- Renewable Biomass. – The Clean Air Act is amended to define the type of biomass from Federal lands that is eligible for qualification under the Renewable Fuels Standard passed in the Energy Independence and Security Act as part of the Clean Air Act. Biomass from certain categories of sensitive lands is excluded, such as Wilderness areas, national parks, and old growth stands. It is found through a Sense of Congress that a consistent definition for “renewable biomass” should be sought by Congress (throughout the various different pieces of legislation).

Sec. 9. Monitoring.

The Secretaries, in consultation with the Senate Energy and Natural Resources Committee and the House Committee on Natural Resources, will appoint a panel of scientists and forest experts to conduct a 5-year review of the Act's implementation.

- The review will include assessments of:
 - Qualitative improvements to forest health.
 - Implementation of restoration projects.
 - Landscape scale planning.
 - Development of biomass utilization.

The panel will provide recommendations on:

- Whether some young managed forests within Late-successional Reserves should be redesignated to replace Matrix old growth and older mature forests that are no longer subject to logging. If these redesignations are recommended, the panel will provide recommendations for a process to determine which specific lands should be redesignated.
- Whether greater flexibility in treating forest stands over 80 years of age in Late-successional Reserves can achieve ecological benefits.
- The effect of excluding Oregon and California grant lands from the Act, and whether it should be continued.

A report with the results of the review and the recommendations shall be submitted to the Senate Energy and Natural Resources Committee and the House Committee on Natural Resources.

Sec. 10. Local and Rural Contracting.

Stewardship Contracts. - The Agencies shall use stewardship contracts when possible for restoration work. 20 year contracts should be utilized when possible with the option to adjust the contract after 10 years. Stewardship contract authorities are modified to so that counties may get a percentage of any receipts from stewardship contracts.

- Bonding requirements for stewardship contracts are modified to allow reduced performance and payment guarantees and to allow funds to be released as the contractor meets certain benchmarks.

- Federal criteria requiring the selection of the lowest bid contract are replaced with Best Value Contracting Criteria based on ecological and collaborative factors. The Agencies are directed to give consideration to locally-based businesses.

Small Log Diameter Incentives. - Provides a 35% federal income tax credit toward the purchase of state-of-the-art low-environmental impact logging, yarding, hauling and milling equipment to encourage utilization of small-diameter trees for the production of timber and the restoration of forests.

Federal Contracting Requirements. - Laborers or mechanics employed to perform services under contracts or subcontracts under this legislation shall be paid prevailing wages and benefits for that locality.

Sec. 11. Existing Timber Sales Contracts.

Existing timber contracts in affected areas can be addressed by one of several alternatives. Contractors can:

- Carry out their contract, consistent with the provisions of this Act.
- Terminate the contract, and be reimbursed the bid price, bond and other federally-required pre-harvest expenditures plus applicable interest, but lose the rights to any profits from the sale of timber in that contract.
- Exercise the remedies already written into their contract.

Contractors must make their decision on one of these three options by 120 days after the enactment of the Act. The Secretaries have 120 days after the contractor makes the election to modify the timber sales under the contract.

Sec. 12. Effect.

Nothing in the Act assumes that an area needs to be thinned in order to provide aquatic protections.

Sec. 13. Authorization of Appropriations.

\$50 million is authorized to be appropriated to carry out the Act. Receipts from sales that are made under the Act are to be retained by the Secretaries in order to conduct further planning and implementation of projects.